

STATE OF HAWAII
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
Honolulu, Hawai'i

November 16, 2007

**Board of Land and
Natural Resources
State of Hawai'i
Honolulu, Hawai'i**

File No.: CC KA-08-01
Existing 180-Day Exp.: December 30 2007
Proposed 180-Day Exp.: February 28, 2008

REGARDING: Request to Extend the Processing Period in Order to Process a Contested Case Hearing for Conservation District Use Application (CDUA) KA-3399 for the Consolidation of Two Parcels and the Construction of the Morrow Single Family Residence (SFR)

APPLICANT: David M. and Linda Morrow

AGENT: Gregory Mooers,
c/o Randy Vitousek, Esq., Cades Schutte LLP,
75-170 Hualalai Road, Suite 303, Kailua Kona, HI 96740

LANDOWNER: David M. and Linda Morrow

LOCATION: Hā'ena, Hanalei District, Kaua'i

TMK: (4) 5-9-03:10, 45

AREA OF PARCEL: 03:10: approximately 7,112 square feet
03:45: approximately 38,555 square feet

USE: 3480 square feet

SUBZONE: Resource and Limited

BACKGROUND:

On July 13, 2007, Roy A Vitousek, III, Esq., acting on behalf of applicants David M. and Linda B. Morrow, requested a Contested Case hearing to challenge the Office of Conservation and Coastal Land's recommendation to deny Conservation District Use Application (CDUA) KA-3399 to consolidate the two above mentioned subject parcels and to construct a single family residence in Hā'ena, Hanalei, Kaua'i.

TIME EXTENSION REQUESTS:

At the same time as he petitioned for a contested case hearing Mr. Vitousek requested

that the processing period for the application be extended. On July 19, 2007 the Chair of the Board of Land and Natural Resources granted the request, extending the processing deadline to October 31, 2007.

On July 27, 2007 the Board authorized the appointment of a Hearing Officer for the case.

On July 30, 2007 the Chair selected Lou Chang, ALC as Hearing Officer.

On September 10, 2007 the challenge period for Mr. Chang's appointment passed without a challenge.

On September 14, 2007 OCCL requested that all parties provide their availability so that a Hearing on Standing could be scheduled. The petitioner has not responded, and a Hearing on Standing has not been set.

On October 2, 2007 OCCL received a request from Mr. Vitousek to extend the processing period an additional sixty days. OCCL noted in their staff report that this sixty-day extension would not allow for sufficient time to process this case. The Board granted the extension on October 12, 2007, and requested that Mr. Vitousek resubmit an additional request to extend the processing period for the November Board meeting.

On November 5, 2007 OCCL received a request for to extend the processing period an additional 60 days (**Exhibit 1**). This will extend the processing period until February 28, 2008.

AUTHORITY FOR GRANTING EXTENSIONS:

The authority for granting time extensions to the CDUA processing period is provided in §183C-6(b), HRS, which states that *when a contested case hearing is required pursuant to Chapter 91, the one-hundred eighty days may be extended an additional ninety days at the request of the applicant. Any request for additional extensions shall be subject to the approval of the Board.*

DISCUSSION:

OCCL notes that the next stages in the contested case– the Hearing on Standing and the Scheduling Hearing - can commence once the petitioner's counsel makes his availability known to the Hearing Officer. OCCL notes that the Department is required by law to post a public notice of the Hearing on Standing in a paper of record 21 days prior to holding the Hearing on Standing.

Counsel's request will extend the processing time on the application to February 8, 2008. This extension will be necessary in order to conduct the Contested Case Hearings.

It is OCCL's policy to always schedule the Board Hearings the meeting before the permit applications potentially expire. Should the Case not be concluded by the

proposed deadline, OCCL anticipates receiving an additional request for an extension for the February 8, 2008 Board meeting. OCCL notes that the petitioner has still not provided his dates of availability for the contested case hearing. OCCL's deadline for receiving requests for agenda items for this Board Meeting is Tuesday, January 29, 2008.

Staff, therefore, recommends as follows:

RECOMMENDATION:


That the Board of Land and Natural Resources grant Mr. Vitousek's request to extend the processing period on CDUA KA-3399 60 days – bringing the deadline to February 8, 2008.

Respectfully submitted,



Michael Cain
Staff Planner

Approved for submittal:


for LAURA H. THIELEN, Chairperson
Board of Land and Natural Resources

ca des schutte

November 5, 2007

Roy A. Vitousek III

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VIA FIRST-CLASS MAIL

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Deputy Attorney General

Land/Transportation Division

State of Hawaii

465 South King Street, Room 300

Honolulu, Hawaii 96813

Re: Conservation District Use Application (CDUA) KA-3399
Proposed Morrow Living Trust Single Family Residence Project,
Haena, Island of Kauai, TMK: (4) 5-9-003:010 and 045

Dear Mr. Ishikawa:

The purpose of this letter is to request a 60-day extension of the decision deadline relative to the above-referenced CDUA.

This matter has been referred to a contested case hearing. We have been attempting to work on the potential resolution of some of the OCCL's concerns. As we agreed in June 2007, the Applicant submitted a revised site plan on July 31, 2007, and on August 27, 2007, and, at your request, submitted a map prepared by the Applicant's surveying and architectural consultants showing the location of the proposed residence relative to the range of locations of the limited subzone boundary due to plotting errors inherent in USGS quad maps. We have received no response from the OCCL or your office.

The Applicant requests another two-month extension from December 31, 2007, to February 29, 2008.

EXHIBIT

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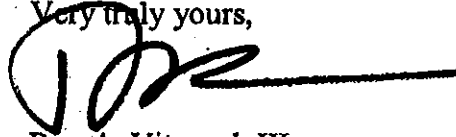
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Randall K. Ishikawa, Esq.
November 5, 2007
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Thank you for your attention to this matter. As always, if you have any questions or require additional information, please contact me.

Very truly yours,



Roy A. Vitousek III

for

CADES SCHUTTE

A Limited Liability Law Partnership

RAV:tmt

cc: Laura H. Thielen, BLNR Chair
Samuel J. Lemmo, Senior Planner
Michael Cain, Staff Planner
Greg Mooers
David Morrow

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